

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JEREMY DAVID,

Plaintiff,

VS.

DIERBERGS MARKET INC.,

Defendant.

Case No. 12-cv-0869-JPG-SCW

REPORT AND RECOMMENDATION

WILLIAMS, Magistrate Judge:

This Report and Recommendation is respectfully submitted to United States District Court Judge J. Phil Gilbert pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C). Plaintiff failed to respond to the Court's March 8, 2013 order regarding discovery. During a discovery dispute hearing on the same, Plaintiff failed to appear and the Court ordered Plaintiff to show cause why this case should not be dismissed with prejudice. Plaintiff failed to respond to the Court's order. For the reasons below, it is **RECOMMENDED** that the case be **DISMISSED**.

BACKGROUND

After a rather lengthy procedural history in state court, this case was removed to federal court. **(See Docs. 1, 20)**. Plaintiff failed to appear at the initial scheduling conference, and the Court entered a scheduling order setting the discovery deadline for May 24, 2013. **(Doc. 23)**. On March 8, 2013, a discovery dispute conference was held to address Plaintiff's failure to send his initial Rule 26 disclosures. **(Doc. 29)**. The Court ordered Plaintiff to send the disclosures by March 15, 2013. **(Doc. 29)**. Plaintiff was also ordered to present himself for a deposition prior to March 22, 2013. **(Doc. 29)**. Plaintiff failed to comply with the March 8, 2013 discovery order and another

discovery dispute conference was held on April 2, 2013. **(Doc. 31)**. Plaintiff failed to appear again. **(Doc. 31)**. The Court ordered Plaintiff to show cause on or prior to April 9, 2013 why the case should not be dismissed with prejudice for failure to comply with the Court's orders and/or failure to prosecute this case. **(Doc. 31)**. To date, no response has been received. The undersigned notes that at all relevant times, Plaintiff has been represented by counsel.

ANALYSIS

Federal Rule of Civil Procedure 16(f) permits sua sponte sanctions, including those authorized by Federal Rule 37(b)(2)(A)(ii)–(vii), against a party who fails to appear at a pre-trial conference. **FED. R. CIV. P. 16(f)(1)(A)**. Rule 37(b) additionally authorizes dismissal where a party fails to obey a discovery order, which the Seventh Circuit has said is a “feeble sanction” if it is without prejudice. *Lucien v. Breweur*, 9 F.3d 26, 28 (7th Cir. 1993); **FED. R. CIV. P. 37(b)(2)(A)(v)**. Dismissal can also be effectuated via Federal Rule 41(b), which states the general principle that failure to prosecute a case should be punished by dismissal with prejudice. *Lucien*, 9 F.3d at 29; *accord James v. McDonald's Corporation*, 417 F.3d 672, 681 (7th Cir. 2005) (under Rule 41(b) a “district court has the authority . . . to [dismiss a case] for lack of prosecution.”).

Here, Plaintiff has failed to attend more than one pre-trial conference. Likewise, he failed obey the Court's order of March 8, 2013 regarding his initial disclosures and his deposition. He has also failed to take any steps to move this case along, including responding to the Court's Show Cause Order. Therefore, because of his repeated failures to appear at pre-trial conferences or follow the Court's orders, the undersigned recommends that this case be **DISMISSED** with prejudice.

CONCLUSION

For the foregoing reasons, this Court **RECOMMENDS** that that Plaintiff's Complaint be **DISMISSED** with prejudice for his failure to appear at pre-trial conferences, his failure to obey the

Court's March 8, 2013 discovery order, and for his failure to diligently prosecute his case.

Objections to this Report and Recommendation must be filed on or before **May 3, 2013**.

IT IS SO RECOMMENDED.

Dated: April 16, 2013

/s/ Stephen C. Williams

STEPHEN C. WILLIAMS

United States Magistrate Judge